AGREEMENT NO. _____

AGREEMENT BETWEEN
THE CITY OF LOS ANGELES AND
ANGEL CITY PRESS

THIS AGREEMENT is made and entered into by and between the CITY OF LOS ANGELES, a municipal corporation ("City" or "LICENSOR"), acting by and through its Executive Director of the Harbor Department ("Executive Director"), and ANGEL CITY PRESS, a California corporation, 2118 Wilshire Boulevard, Suite 880, Santa Monica, California ("Publisher" or "LICENSEE").

WHEREAS, Publisher requests permission to reprint, distribute and sell the copyrighted book entitled "*Terminal Island, Lost Communities of Los Angeles Harbor*" a commemorative pictorial history of Terminal Island published by Publisher for City under Harbor Department Agreement No. E6703 ("LICENSED WORK"); and

WHEREAS, City is the sole and exclusive owner of all intellectual property rights to the LICENSED WORK and through this Agreement is granting certain rights to Publisher to publish and sell the LICENSED WORK in exchange for payment as set forth herein; and

WHEREAS, City has the power and authority to grant to Publisher the right and license to publish and sell the LICENSED WORK, as well as advertise and promote the LICENSED WORK; and

WHEREAS, both City and Publisher are in agreement with respect to the terms and conditions on which Publisher shall use the LICENSED WORK;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

## 1. LICENSE

LICENSOR hereby grants to LICENSEE under the terms and conditions of this Agreement as recited herein a non-exclusive, non-assignable right and license to publish, market and sell three thousand (3,000) softcover copies of the LICENSED WORK worldwide (the "Licensed Territory") by the right to publish, display, distribute, or otherwise exploit the LICENSED WORK, in print media format only. LICENSEE may publish an additional two hundred (200) softcover copies of the LICENSED WORK for

use by the LICENSOR to provide to third parties gratis for review, promotion, advertising, sample or similar purposes, and for which a royalty payment shall not be due to LICENSOR under Section 3 of this Agreement. LICENSEE shall publish an additional one hundred (100) softcover copies of the LICENSED WORK for the LICENSOR pursuant to Section 3(A)(vi) of the Agreement, and for which a royalty payment shall not be due to LICENSOR. It is understood and agreed that this license shall pertain only to the LICENSED WORK as created and published under Agreement No. E6703, and does not extend to any other work, product or service. This license does not grant LICENSEE the right to make modifications to the LICENSED WORK nor to make derivative works based on the LICENSED WORK. All rights not specifically granted herein are reserved by LICENSOR.

## 2. EFFECTIVE DATE AND TERM OF THE AGREEMENT

The effective date of this Agreement shall be upon the date of signature of the Executive Director and except as otherwise provided, shall be in full force and effect commencing on the Effective Date for one (1) year, inclusively (the Term), unless sooner terminated by either party as set forth in Section 7 of this Agreement. This Agreement may be renewed for an additional term only upon mutual agreement of the parties, and in accordance with City's Charter and Administrative Code. Notwithstanding the foregoing, LICENSEE's right to display, distribute or sell the LICENSED WORK published in accordance with the terms of this Agreement shall survive the termination of this Agreement.

## 3. COMPENSATION

In consideration for the license granted hereunder for the use of the LICENSED WORK, the Parties agree to the following compensation:

A) LICENSED WORK. Publisher shall make royalty payments for use of the LICENSED WORK pursuant to the terms of this Agreement, payable as follows:

(i) Upon the effective date of the Agreement, LICENSEE shall pay City the sum of Three Thousand Dollars ($3,000), payable to the "*City of Los Angeles Harbor Department*";

(ii) No later than two (2) weeks after the completion of the first six (6) months of the Agreement, LICENSEE shall render to City an accounting of the number of copies of the LICENSED WORK published and the number sold during the first six (6) months of the Agreement. Based on the number of copies published, LICENSEE shall pay City a Ten Percent (10%) royalty of the retail price of each published copy of the LICENSED WORK.

(iii) No later than two (2) weeks prior to the termination date of the Agreement, LICENSEE shall render to City an accounting of the number of books of the LICENSED WORK published and the number sold during the second Six (6) months of the Agreement. Based on the number of books published during the second six month period, and prior to the termination of the Agreement, LICENSEE shall pay City a Ten Percent (10%) royalty of the retail price of each published copy of the LICENSED WORK.

(iv) Based on the accounting provided by LICENSOR under Section 3(A)(iii), the license granted for any unpublished books of the 3,200 authorized publications under Section 1 of this Agreement shall be null and void upon providing said accounting to the City.

(v) The parties agree that the total compensation due under this Section A, Subsections (i) through (iii) shall not exceed Ten Thousand Five Hundred Dollars ($10,500) and shall not be less than the Three Thousand Dollars ($3,000) paid under Section 1(i) hereunder.

(vi) Within three (3) months of the effective date of the Agreement, LICENSEE shall deliver to LICENSOR One Hundred (100) copies of the LICENSED WORK, said delivery to be paid for by LICENSOR and made to 425 S. Palos Verdes Street, San Pedro, California, 90731, Attention: Community Relations Office.

B. Other Merchandises and Productions. LICENSEE shall not, without a separate written agreement with LICENSOR, use the LICENSED WORK in connection with any goods, products or productions related to the Licensed Materials, including without limitation, TV or film productions, entertainment content, video games, magazines, hats, caps, T-shirts, other items of clothing, mugs, pens, stationery and office supplies, dolls, action figures, figurines, toys, theme parks, and games of all sorts.

## 4. COPYRIGHT NOTICES

A. Marking. The License granted hereunder is conditioned upon LICENSEE's full and complete compliance with the marking provisions of the copyright laws of the United States.

B. Legal Notice Requirements. The published LICENSED WORK shall include copyright notices for the LICENSED WORK licensed herein in appropriate places customary in publications.

## 5. INTELLECTUAL PROPERTY RIGHTS

A. LICENSEE acknowledges LICENSOR's exclusive right in the LICENSED WORK, and further acknowledges that the LICENSED WORK is original to LICENSOR and that LICENSOR is the copyright owner thereof. LICENSEE shall not, at any time during or after the effective Term of the Agreement, dispute or contest, directly or indirectly, LICENSOR's exclusive right and title to the LICENSED WORK or the validity of the copyright thereof.

B. LICENSEE agrees that it does not and shall not acquire any rights in the LICENSED WORK as a result of this license.

C. LICENSEE acknowledges that any rights not expressly granted herein remain solely with LICENSOR, including without limitation, the right to use, and to authorize others to use, the LICENSED WORK in connection with any versions, products or services in the Licensed Territory.

D. LICENSEE's duty under this Section 5 shall survive the expiration or any termination of this Agreement.

## 6. INFRINGEMENT

LICENSEE agrees to promptly notify LICENSOR of any infringement of the LICENSED WORK by others, or any hostile or adversary actions or proceedings by others against the LICENSED WORK, of which it becomes aware. LICENSOR shall have the sole right and discretion to take enforcement action against such infringement or to defend the LICENSED WORK in such hostile or adversary actions or proceedings. Upon LICENSOR's request, and at LICENSOR's cost and expense, LICENSEE shall

provide necessary and reasonable assistance with respect to said enforcement action or defense.

## 7. TERMINATION

The following termination rights are in addition to the termination rights that may be provided elsewhere in the Agreement:

A. Right to Terminate Upon Notice. Either party may terminate this Agreement with a thirty-day (30) written notice to the other party in the event of a material breach of any material provisions of this Agreement by the other party, provided that, during the thirty-day period, the breaching party fails to cure such breach.

B. LICENSEE Right to Terminate. LICENSEE shall have the right to terminate this Agreement at any time with a thirty-day (30) written notice to LICENSOR, such termination to become effective at the conclusion of such thirty-day (30) period. In the event that LICENSEE terminates this Agreement, LICENSEE shall be obligated to make any payments due under Section 3 up to the effective date of termination, and LICENSEE shall not be entitled to any refunds of payments made or due to LICENSOR up to the effective date of the termination.

## 8. POST TERMINATION RIGHTS

Upon the expiration or termination of this Agreement, all rights granted to LICENSEE under this Agreement shall forthwith terminate and immediately revert to LICENSOR and LICENSEE shall discontinue all use of the LICENSED WORK. Notwithstanding the foregoing, LICENSEE's right to display, distribute or sell copies of the LICENSED WORK published in accordance with the terms of this Agreement shall survive the termination of this Agreement.

## 9. INDEMNITY

LICENSEE agrees to defend and indemnify LICENSOR, and its officers, directors, agents, and employees, against all costs, expenses, and losses (including reasonable attorney fees and costs) incurred through claims of third parties against LICENSOR based on the use, reproduction, distribution, display or exploitation of the

LICENSED WORK. LICENSEE further agrees to indemnify, defend, and hold harmless LICENSOR from and against any liability, damages and expense (including reasonable attorney fees and costs) suffered as a result of LICENSEE's breach of any provisions of this Agreement, including LICENSOR's enforcement under Section 6. LICENSEE's duties under this provision shall survive the expiration or any termination of this Agreement.

**10. NOTICES**

In all cases where written notice is to be given under this Agreement, service shall be deemed sufficient if said notice is deposited in the United States mail, postage prepaid. When so given, such notice shall be effective from the date of mailing of the same. For the purposes hereof, unless otherwise provided by notice in writing from the respective parties, notice to the Department shall be addressed to Director of Community Relations, Los Angeles Harbor Department, P.O. Box 151, San Pedro, California 90733-0151, and notice to Publisher shall be addressed to it at the address set forth above. Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law.

**11. GOVERNING LAW/VENUE**

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to the conflicts of law, rules and principles of such State. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State or Federal courts located in the County of Los Angeles, State of California, in the judicial district required by court rules.

**12. AGREEMENT BINDING ON SUCCESSORS**

The provisions of the Agreement shall be binding on and shall inure to the benefit of the parties hereto, and their heirs, administrators, successors, and assigns.

## 13. WAIVER

A failure of any party to this Agreement to enforce the Agreement upon a breach or default shall not waive the breach or default or any other breach or default. All waivers shall be in writing.

## 14. SEVERABILITY

Should any part, term, condition or provision of this Agreement be declared or determined by any court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law, public policy, or city charter, the validity of the remaining parts, terms, conditions or provisions of this Agreement shall not be affected thereby, and such invalid, illegal or unenforceable part, term, condition or provision shall be treated as follows: (a) if such part, term, condition or provision is immaterial to this Agreement, then such part, term, condition or provision shall be deemed not to be a part of this Agreement; or (b) if such part, term, condition or provision is material to this Agreement, then the parties shall revise the part, term, condition or provision so as to comply with the applicable law or public policy and to effect the original intent of the parties as closely as possible.

## 15. ASSSIGNABILITY

The license granted hereunder is personal to LICENSEE and shall not be assigned by any act of LICENSEE or by operation of law, without the prior written consent of CITY, which shall be at the sole discretion of the City.

## 16. RELATIONSHIP TO PARTIES; THIRD-PARTY BENEFICIARY

LICENSEE acknowledges that it is not an agent or representative of LICENSOR and has no authority to assume or create any obligation on behalf of or in the name of, or binding upon, LICENSOR, or to represent LICENSOR in any manner not specifically provided herein. Nothing in this Agreement is intended to create any third-party beneficiary relationship.

## 17. INTEGRATION

This Agreement contains the entire understanding and agreement between the parties hereto with respect to the matters referred to herein. No other representations, covenants, undertakings, or prior or contemporaneous agreements, oral or written, regarding such matters which are not specifically contained, referenced, and/or incorporated into this Agreement by reference shall be deemed in any way to exist or bind any of the parties. Each party acknowledges that it has not been induced to enter into the Agreement and has not executed the Agreement in reliance upon any promises, representations, warranties or statements not contained, referenced, and/or incorporated into the Agreement. **THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO BE, AND IS, AN INTEGRATED AGREEMENT.**

## 18. COMPLIANCE WITH APPLICABLE LAWS

Publisher shall at all times in undertaking the rights provided pursuant to this Agreement comply with all applicable laws, statutes, ordinances, rules and regulations, and with the reasonable requests and directions of Executive Director.

## 19. STATE TIDELANDS GRANTS

This Agreement is entered into in furtherance of and as a benefit to the State Tidelands Grant and the trust created thereby. Therefore, this Agreement is at all times subject to the limitations, conditions, restrictions and reservations contained in and prescribed by the Act of the Legislature of the State of California entitled "An Act Granting to the City of Los Angeles the Tidelands and Submerged Lands of the State Within the Boundaries of Said City," approved June 3, 1929 (Stats. 1929, Ch. 651), as amended, and provisions of Article VI of the Charter of the City of Los Angeles relating to such lands. Publisher agrees that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

## 20. CONSTRUCTION OF AGREEMENT

This Agreement shall not be construed against the party preparing the same,

shall be construed without regard to the identity of the person who drafted such and shall be construed as if all parties had jointly prepared this Agreement and it shall be deemed their joint work product; each and every provision of this Agreement shall be construed as though all of the parties hereto participated equally in the drafting hereof; and any uncertainty or ambiguity shall not be interpreted against any one party. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable.

## 21. TITLES AND CAPTIONS

The parties have inserted the Article titles in this Agreement only as a matter of convenience and for reference, and the Article titles in no way define, limit, extend or describe the scope of this Agreement or the intent of the parties in including any particular provision in this Agreement.

## 22. MODIFICATION IN WRITING

This Agreement may be modified only by written agreement of all parties. Any such modifications are subject to all applicable approval processes required by, without limitation, City's Charter and Administrative Code.

## 23. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute together one and the same instrument.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date to the left of their signatures.

THE CITY OF LOS ANGELES
HARBOR DEPARTMENT

Dated: _____

By _____
EUGENE D. SEROKA
Executive Director

ANGEL CITY PRESS

Dated: _____

By _____
Type Name:
Type Title:

Attest _____
Type Name:
Type Title:

APPROVED AS TO FORM AND LEGALITY
_____, 2018
MICHAEL N. FEUER, City Attorney
Janna B. Sidley, General Counsel

By _____
Heather M. McCloskey, Deputy

Rev. 03/06/18